

**DISTRICT OF COLUMBIA
DOH OFFICE OF ADJUDICATION AND HEARINGS**

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

INDEPENDENCE MANAGEMENT COMPANY
Respondent

Case Nos.: I-00-20334
I-00-20239

FINAL ORDER

I. Introduction

This case arises under the Civil Infractions Act of 1985, D.C. Official Code §§ 2-1801.01–2-1802.05, and Title 21 Chapter 7 of the District of Columbia Municipal Regulations (“DCMR”). By Notice of Infraction (00-20234) served by first-class mail, the Government charged Respondent Independence Management Company with a violation of 21 DCMR 700.3 for allegedly failing to properly store and containerize solid wastes (the “Regulation”).¹ The Notice of Infraction alleged that Respondent violated the Regulation on January 3, 2002 at 2317 16th Street, S.E. (the “Property”), and sought a fine of \$1,000.

Respondent did not file an answer to the Notice of Infraction within the required twenty days after service (fifteen days plus five additional days for service by mail pursuant to D.C. Official Code §§ 2-1802.02(e) and 2-1802.05). Accordingly, on February 13, 2002, this administrative court issued an order finding Respondent in default and subject to a statutory

¹ 21 DCMR 700.3 provides: “All solid wastes shall be stored and containerized for collection in a manner that will not provide food, harborage, or breeding places for insects or rodents, or create a nuisance or fire hazard.”

penalty of \$1,000 as required by D.C. Official Code § 2-1801.04(a)(2)(A), and requiring the Government to serve a second Notice of Infraction.

The Government served the second Notice of Infraction (00-20239) on February 21, 2002. Respondent failed to answer that Notice within twenty days of service. Accordingly, on April 17, 2002, a Final Notice of Default was issued, finding Respondent in default on the second Notice of Infraction and subject to a statutory penalty of \$2,000 pursuant to D.C. Official Code § 2-1801.04(a)(2)(B). The Final Notice of Default also set May 14, 2002, as the date for an *ex parte* proof hearing, and afforded Respondent an opportunity to appear at that hearing to contest liability, fines or statutory penalties.

Mr. Norris Goins, the Government inspector who issued the Notices of Infraction, appeared on behalf of the Government at the hearing. No one appeared on behalf of the Respondent. Based upon the testimony of Mr. Goins, my evaluation of his credibility, the documents admitted into evidence and the entire record in this matter, I make the following findings of fact and conclusions of law:

II. Findings of Fact

On January 3, 2002, Mr. Goins inspected the Property and observed a large trash dumpster that was uncovered and over-flowing with plastic bags filled with solid wastes and bulk trash, including furniture and boxes, and other solid wastes scattered on the ground around the dumpster, as reflected on the three photographs taken by Mr. Goins on January 3. PX 100-103.

Mr. Goins saw a sign at the front of the Property that identified the Respondent as the manager of the Property and listed its address. Mr. Goins then reviewed the District of Columbia Real Property Assessment Database maintained by the Office of the Chief Financial Officer of the District of Columbia to ascertain the name and address of the owner. As reflected in that record, Respondent is listed as the owner of the Property with its last known business address as 668 Independence Avenue, S.E.

The Government served the first and second Notices of Infraction upon Respondent by first class mail at its last known business address, and there is no evidence in the record that those Notices were returned by the United States Postal Service (“USPS”). This administrative court’s order of February 13, 2002, with a copy of the first Notice of Infraction attached, and the Final Notice of April 17, 2002, with copies of both Notices of Infraction attached, were served upon Respondent by priority mail/delivery confirmation at its last known business address. According to the USPS delivery confirmation receipts contained in the record, the order and Final Notice were delivered to Respondent’s last known business address.

Respondent has not offered any explanation for its failure to respond to the first and second Notices of Infraction.

III. Conclusions of Law

A. Notice to Respondent

The Notices of Infraction were mailed to Respondent’s last known business address, and there is no evidence in the record that they were returned as undeliverable by USPS. In addition, this administrative court’s order of February 13, 2002, and Final Notice of April 17, 2002, were

mailed to Respondent's last known business address and were confirmed by the USPS as being delivered. Accordingly, Respondent received adequate notice of the charges and of the hearing date, as required by the Civil Infractions Act and by the Due Process Clause. D.C. Official Code §§ 2-1802.01 and 2-1802.05; *Dusenberry v. United States*, 354 U.S. 161 (2002); *Mennonite Board of Missions v. Adams*, 462 U.S. 791, 800 (1983); *McCaskill v. District of Columbia Dep't of Employment Servs.*, 572 A.2d 443, 445 (D.C. 1990); *Carroll v. District of Columbia Dep't of Employment Servs.*, 487 A.2d 622, 624 (D.C. 1985).

B. Respondent's Violation

By allowing the trash dumpster on the Property on January 3, 2002, to be open and overflowing with plastic bags filled with solid wastes and bulk trash, and by allowing other solid wastes, including furniture and boxes, to be scattered on the ground around the dumpster, Respondent failed to store and containerize its solid wastes "in a manner that will not provide food, harborage, or breeding places for insects or rodents, or create a nuisance or fire hazard," and, as a result, violated 21 DCMR 700.3. *DOH v. Kennerly*, OAH No. I-00-20422 at 4-5 (Final Order, April 14, 2002); *DOH v. Washington Rehabilitation*, OAH No. I-00-20331 at 3-4 (Final Order, March 12, 2002). A fine of \$1,000 is authorized for a first violation of this regulation, and it will be imposed without reduction. 16 DCMR §§ 3201.1(a)(1) and 3216.1(b).

C. Respondent's Failure to Answer

The Civil Infractions Act, D.C. Official Code §§ 2-1802.02(f) and 2-1802.05, requires the recipient of a Notice of Infraction to demonstrate "good cause" for failing to answer it within twenty days of the date of service by mail. If a respondent cannot make such a showing, the statute requires that a penalty equal to the amount of the proposed fine be imposed. D.C. Official

Code §§ 2-1801.04(a)(2)(A) and 2-1802.02(f). If a recipient fails to answer a second Notice of Infraction without good cause, the statutory penalty doubles. D.C. Official Code §§ 2-1801.04(a)(2)(B) and 2-1802.02(f).

Because Respondent has offered no explanation for its failure to answer the first and second Notices of Infraction in this case, there is no basis for concluding that it had good cause for that failure. Accordingly, a statutory penalty of \$2,000, in addition to the \$1,000 fine, will be imposed without reduction.

IV. Order

Based upon the above findings of fact and conclusions of law, it is, hereby, this _____ day of _____, 2002:

ORDERED, that Respondent shall pay a fine and statutory penalties in the total amount of **THREE THOUSAND DOLLARS (\$3,000)** in accordance with the attached instructions within twenty (20) calendar days of the date of mailing of this Order (fifteen (15) calendar days plus five (5) days for service by mail pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

ORDERED, that, if Respondent fails to pay the above amount in full within twenty (20) calendar days of the date of mailing of this Order, by law, interest must accrue on the unpaid amount at the rate of 1 ½% per month or portion thereof, beginning with the date of this Order, pursuant to D.C. Official Code § 2-1802.03(i)(1); and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including

the suspension of Respondent's licenses or permits pursuant to D.C. Official Code § 2-1802.03(f), the placement of a lien on real or personal property owned by Respondent pursuant to D.C. Official Code § 2-1802.03(i) and the sealing of Respondent's business premises or work sites pursuant to D.C. Official Code § 2-1801.03(b)(7).

/s/ 05/22/02

Robert E. Sharkey
Administrative Judge